

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
AURANGABAD BENCH, AURANGABAD

WRIT PETITION NO. 715 OF 2013

Shahada Taluka Co-operative Education  
Society, Shahada, Tq. Shahada,  
District Nandurbar,  
through its Chairman,  
Shri Mohlal Fakira Patil,  
age 64 years, occ. Agril.,  
r/o Shahada, Dist.Nandurbar

...Petitioner  
[Orig. Respondent]

VERSUS

- 1] Shri Kalyan Sajan Patil,  
age major, occ. Agril.,  
r/o Vadali, Tq. Shahada,  
Dist. Nandurbar,
- 2] State of Maharashtra, thr.  
Assistant Registrar,  
The First Appellate Authority,  
Co-operative Societies,  
Shahada, Dist.Nandurbar

...Respondents  
[No.1 Orig. Applicant]

.....  
Shri S.U.Choudhary, advocate with  
Shri N.N.Desle, advocate for the Petitioner  
Shri Milind Patil, advocate for respondent no.1  
Shri S.M.Jadhav, A.G.P. for respondent no.2  
.....

CORAM : S.S.SHINDE, J.

DATE OF RESERVING

THE JUDGMENT

: 12.12.2013

DATE OF PRONOUNCEMENT

OF THE JUDGMENT

: 19.12.2013

**ORAL JUDGMENT :-**

1] Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties the petition is heard finally.

2] This Writ Petition takes exception to the judgment and order, dated 27.12.2012, passed by in Appeal No. 669 of 2012 by the State Information Commission, Bench at Nashik and also the order, dated 23.5.2011, passed by the appellate authority/Assistant Registrar, Cooperative Societies, Shahada, District Nandurbar.

3] The background facts leading for filing the Writ Petition, as disclosed in the memo of the petition, are as under :-

It is the case of the petitioner, namely Shahada Taluka Cooperative Education Society Limited, Shahada, District Nandurbar that the said society has been registered under the provisions of the Cooperative Societies Act in the year 1952 i.e. prior to coming into existence of the Maharashtra Cooperative Societies Act and the said registration is continued inadvertently and later on in the year 1955 it came to be registered under the provisions of the Bombay Public Trust Act, 1950.

4] It is the case of the petitioner society that on 16.3.2011 the respondent no.1 herein submitted an application seeking information under the Right to Information Act, 2005 before the petitioner society in the capacity of Chairman of the Shahada Taluka Cooperative Education Society.

5] Petitioner society rejected the application of the respondent no.1 on the ground that the said application was received on 17.3.2011. It is also the contention of the petitioner society that, as the petitioner society is registered under the Societies Registration Act and under the Bombay Public Trust Act, as per the Right to Information Act the petitioner society does not fall under the definition of "public authority", and hence the petitioner society is not duty bound to supply information sought by the respondent no.1.

6] Respondent no.1, aggrieved by the rejection of application, preferred Appeal No. 1 of 2011 before the respondent no.2. The petitioner society appeared and filed its written statement contending that, the petitioner society is registered under the Cooperative Societies Act and the Bombay Public Trust Act. It is the case of the petitioner that the respondent no.2 has no jurisdiction to entertain the appeal and therefore the appeal is not maintainable. The petitioner society contends that since the Head Master is appointed as an Information Officer, the petitioner society is not duty bound to provide the information.

7] Respondent no.2 allowed the appeal filed by the respondent no.1 holding that since the petitioner society is registered under the Maharashtra Cooperative Societies Act, 1960 and Rules thereunder, it is covered under Section 2(h)(d)(2) of the Right to Information Act, and accordingly directed the petitioner society to provide the information applied by the respondent no.1.

8] Being aggrieved by the order passed by the respondent no.2 allowing the appeal filed by the respondent no.1, the petitioner society preferred Appeal No. 669 of 2011 before the State Information Commission, Nashik. The State Information Commissioner, upon hearing the parties was pleased to reject the said

appeal by its judgment and order, dated 27.12.2012. Hence by this petition, the petitioner society prays for quashing and setting aside the judgment and orders passed by the State Information Commission, Nashik.

9] The learned counsel appearing for the petitioner submits that the the authorities below have committed error in holding that the petitioner society is “public authority” as per Section 2(h) of the Right to Information Act. In fact, it ought to have considered that the petitioner is not appointed as a Public Information Officer under the Right to Information Act. The authorities have failed in interpreting the meaning of the Cooperative Society and the institutions run by the Cooperative Societies, as the petitioner society is not receiving any Government aid directly. The aid is received by the Schools and Colleges run by the Cooperative Education Society and the said aid comes directly in the account of the Head Master and the Chairman. As such the respondent no.1 has approached the wrong authority. The authorities below also failed to consider the nature of information sought for by the respondent no.1. The information sought for by the respondent no.1 is in respect of constitution of the society and functioning and affairs of the society and not in respect of the grant in aid, and therefore, said information cannot be supplied to the respondent no.1.

10] Learned counsel appearing for the petitioner society submits that the petitioner society could not be held to be public authority under the Right to Information Act, as the petitioner society is a cooperative society and its Directors are elected by the share holders of the society, and as such it is not the “State or State instrumentality”. It is further submission of the counsel for the petitioner that as per the Circular, dated 11.4.2012 issued by the Commissioner of Cooperation, Maharashtra State, Pune, the Right to Information Act is not applicable to the

Societies registered under the Maharashtra Cooperative Societies Act, 1960.

11] Learned counsel appearing for the petitioner submits that the Division Bench of this court in the case of **Goa Cricket Association and another vs State of Goa and others**, reported in 2013 (4) Mh.L.J. 453 has held that the State Information Commission is a multi member body and that the Commission cannot consist of only one member. The commission must consist of State Chief Information Commissioner and at least one more State Information Commissioner. Therefore, relying upon the said judgment, counsel appearing for the petitioner submits that the appeal filed by the petitioner ought to have been heard by the multi member body of the Commission. It is submitted that the judgment of this court in the case of **People Welfare Society through its President vs The State Information Commissioner, Nagpur Bench, Nagpur** in Writ Petition No. 5168 of 2010 delivered on 29.3.2011 cannot be made applicable in the facts of the present case. It is submitted that the petitioner from whom the information is sought is not duty bound to supply the information. It is submitted that the information is sought is in respect of constitution of the society and functioning of the society. Though the institutions are run by the society, if the information would have been asked in respect of aid or functioning of Schools which are run and operated by receiving aid from the State Government, then the Public Information Officer is duty bound to supply the information, but the information sought by the respondent no.1 is regarding the affairs of the society as mentioned in R.T.I. application and said information cannot be given under the Right to Information Act. The petitioner is not public authority within the meaning of Section 2(h) of the Right to Information Act. Therefore, the counsel for the petitioner submits that the petition deserves to be allowed.

12] On the other hand, the counsel appearing for the respondent no.1 invited my attention to the affidavit in reply and submitted that the contents in the writ petition about non-application of the provisions of the Right to Information Act are misleading and as such denied the same in toto.

Counsel submits that the petitioner society is registered as a Cooperative Society and it is a public trust. The function of the petitioner society is to impart education and it imparts education since the year 1952. The petitioner society has its branches at Shahada, Kahatuli, Vadali, Fes and Prakasha. It runs Primary School, Secondary School, Senior College, D.Ed. College, Fashion Design Diploma, etc. The counsel further submits that the petitioner society gets salary and non-salary grants from the State Government and the appointments of the teachers are approved by the Education Officer of the State Government and the salary of the teachers is paid out of the said Government grants.

13] Learned counsel appearing for respondent no.1 submits that the Maharashtra Employees of Private Schools Act, 1981, the University Act and the government resolutions issued by the State Government are applicable to the petitioner society, and as such the petitioner society comes under the control of the State Government.

14] The counsel appearing for respondent no.1 relies upon the definition of the "public authority" as defined in Section 2 (h) of the Right to Information Act, 2005.

15] The counsel further submits that the Head Master while receiving grants of the school acts as the Chief Executive Officer of the school representing the society, though the Head Master is not appointed as the Chief Executive

Officer. It is submitted that the appointment of the Head Master of the school as the Chief Executive Officer to represent the society is always for administrative convenience.

16] The counsel for the respondent no.1 submits that the provisions of the Right to Information Act, 2005 are squarely applicable to the petitioner society, and the order passed by the State Information Commission is perfectly legal and correct and the petition is devoid of any substance and same deserves to be rejected.

The learned counsel appearing for respondent no.1 invited my attention to the unreported judgment of this court in the case of **People Welfare Society** (supra) and submits that the petitioner society is receiving aid from the Government, and therefore, in view of the judgment in afore mentioned case, the petitioner society is bound to supply the information to the respondent no.1. Therefore, he submits that the petition may be rejected.

17] I have given careful consideration to the rival submissions advanced by the counsel for the parties and with their able assistance perused the grounds taken in the petition, annexures thereto, the reasons recorded in the impugned order and also the judgments cited across Bar by the counsel for the parties.

18] It is not in dispute that the schools run by the petitioner society are receiving grant in aid from the State Government. The distinction which is tried to be made by the counsel for the petitioner that the petitioner is the Chairman of the Shahada Taluka Cooperative Education Society and the information sought is in respect of affairs of the society and not about the school which are receiving grant

in aid directly in the account of the Head Master, and therefore, the petitioner is not obliged to give information sought for. It clearly appears that Shahada Taluka Cooperative Education Society is established for imparting education. The sole purpose of forming such society is for establishing school and imparting education. Therefore, the distinction which is tried to be made by the petitioner, as afore mentioned, needs no consideration. Though the Information Officer is appointed, the petitioner, when called upon to furnish the information, is bound to supply the same to the respondent no.1.

19] By way of impugned order only direction is issued to the petitioner to furnish the information as sought by the respondent no.1 within fifteen days. Acceptance of the interpretation of the arguments of the petitioner that information sought is in respect of affairs of the society and not in respect of the school receiving grant in aid, would defeat the object of introducing the Right to Information Act, 2005.

20] The said Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. The constitution of India has established democratic Republic and democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.

Therefore, the Right to Information Act, 2005 has been introduced with laudable object and said cannot be defeated by accepting narrow interpretation as



canvassed by the petitioner.

21] This court in the case of **People Welfare Society** (supra) has considered some what similar controversy and held that the institutions receiving grant in aid are bound by the provisions of the Right to Information Act, 2005.

22] In that view of the matter, the contention of the petitioner cannot be accepted. However, I find considerable force in the argument canvassed by the counsel appearing for the petitioner that the Division Bench of this court in the case of **Goa Cricket Association** (supra) held that the State Information Commission is a multi member body and commission must consist of State Information Commissioner and at least one more State Information Commissioner, and therefore, any appeal or application is required to be considered by the multi member body.

23] In that view of the matter, the impugned order passed by the State Information Commissioner, Bench at Nashik deserves to be quashed and set aside, as the decision given on 27.11.2012 in the appeal is only by one member i.e. the State Information Commissioner, Bench at Nashik. Therefore, in view of the judgment of the Division Bench in the case of **Goa Cricket Association** (supra), the impugned judgment and order, dated 27.12.2012 is quashed and set aside. Appeal No.669 of 2011 is restored to its original file. The State Information Commission, Bench at Nashik to hear the said appeal, after constituting the Bench in the light of the judgment of the Division Bench in **Goa Cricket Association** (supra) and decide the same as expeditiously as possible, however, within two months from today.

24] It is made clear that any observations made in this order or the in the impugned order of the State Information Commissioner, Bench at Nashik would not come in the way of appellate court while considering the appeal afresh. The appellate authority to hear the parties and decide the appeal on its own merits without being influenced by any observations made in this order or in the impugned order of the appellate court.

25] Rule is made absolute in above terms. Petition stands disposed of accordingly.

**(S.S.SHINDE, J.)**

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